TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

[redacted] TERM, [redacted] 1920

No. [redacted] 278

WILLIAM C. STREET, APPELLANT,

vs.

LINCOLN SAFE DEPOSIT COMPANY AND DANIEL E. PORTER.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED [redacted], 1920.

(27,208)

(27,550)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1919.

No. 795.

WILLIAM G. STREET, APPELLANT,

vs.

LINCOLN SAFE DEPOSIT COMPANY AND DANIEL L. PORTER.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MARCH 18, 1920.

1 *Equity Subpœna.*

The President of the United States of America to Lincoln Safe Deposit Company and Daniel L. Porter, Greeting:

You are hereby commanded to appear before the Judges of the District Court of the United States of America for the Southern District of New York, in the Second Circuit, to answer a bill of complaint exhibited against you in the said Court in a suit in Equity, by William G. Street and to further do and receive what the said Court shall have considered in this behalf; and this you are not to omit under the penalty on you and each of you of Two Hundred and Fifty Dollars ($250).

Witness, Honorable Learned Hand, Judge of the District Court of the United States for the Southern District of New York, at the City of New York, on the 8th day of January, in the year one thousand nine hundred and twenty and of the Independence of the United States of America the one hundred and forty-fourth.

ALEX. GILCHRIST, SR.,
Clerk.

DAVIES, AUERBACH & CORNELL,
Sol'rs.

34 Nassau.

The defendants are required to file their answer or other defense in the above cause in the Clerk's office of this Court, on or before the twentieth day after service hereof excluding the day of said service; otherwise the bill aforesaid may be taken pro confesso.

ALEX. GILCHRIST, SR.,
[SEAL.] *Clerk.*

2 In the United States District Court, Southern District of New York.

WILLIAM G. STREET, Complainant,

against

LINCOLN SAFE DEPOSIT COMPANY and DANIEL L. PORTER, Defendants.

On reading the annexed Bill of Complaint, let the defendants herein show cause before this court at a term thereof for the hearing of motions, to be held in the Post Office Building in the Borough of Manhattan, City of New York on the 12th day of January, 1920, at 10:30 o'clock in the forenoon or as soon thereafter as counsel can be heard, why an order should not be made during the pendency of this action, restraining the defendants from interfering in any manner with complainant's possession of and property in the wines and

liquors in the rooms leased by him from the Lincoln Safe Deposit Company as stated in his Bill of Complaint, and from disturbing, removing, selling, distributing or otherwise disposing of said wines or liquors or any of them, whether in said rooms or elsewhere, except by the complainant's authority, and why the complainant should not have such other and further relief as may be just.

Sufficient cause appearing, service of a copy of this order on the defendants, on or before the 9th day of January, 1920, shall be sufficient service; and pending the determination of the motion arising on this order to show cause, the defendant Lincoln Safe Deposit Company, their agents and representatives are hereby re-
3 strained from interfering with the complainant's possession as aforesaid and from disturbing, removing, selling, distributing or otherwise disposing of said wines and liquors, or any of them, except by the complainant's authority.

Dated, New York, January 8, 1920.

JOHN C. KNOX,
United States District Judge.

4 In the United States District Court, Southern District of New York.

WILLIAM G. STREET, Complainant,

against

LINCOLN SAFE DEPOSIT COMPANY and DANIEL L. PORTER, Defendants.

Bill of Complaint.

To the Honorable Judges of the District Court of the United States for the Southern District of New York, Sitting in Equity:

The complainant, by Davies, Auerbach & Cornell, his attorneys, for his bill of complaint against the defendant, respectfully shows:

First. The complainant is a citizen and resident of the State of New York, residing in the County of New York.

Second. On information and belief, the defendant, Lincoln Safe Deposit Company, is a corporation duly organized and existing under and pursuant to the laws of the State of New York and is authorized by its charter to engage in the warehousing business.

Third. On information and belief, the defendant, Daniel L. Porter, is a citizen and resident of the State of New York, residing in the County of New York, and is an agent of the Commissioner of Internal Revenue, duly appointed under the provisions of the National Prohibition Act and charged with the duty of enforcing said Act in the County of New York and elsewhere in the Second Collection District of New York.

Fourth. The defendant, Lincoln Safe Deposit Company, is the owner of a large storage Warehouse at No. 60 East Forty-second Street, in the Borough of Manhattan, City of New York, and is and has been for a long time engaged in the business of a public warehouseman.

Fifth. The complainant, by contract with said defendant, for more than ten years past has been and still continues to be the lessee of three certain rooms, Nos. I-574, I-582 and K-54, in the said storage warehouse, and has and will continue to have possession of said rooms and the right to store goods therein under an agreement that such possession shall continue so long as desired by the complainant, provided the charges lawfully imposed for such use and possession are duly paid, and such rooms are used for storage purposes only and not for any use which is hazardous, offensive or unlawful.

Sixth. In one of the rooms aforesaid there are stored, and have been stored for many years last past, with other goods, certain wines and liquors and having an alcoholic content exceeding one-half of one per centum by volume, which wines and liquors are owned by the complainant and are in his exclusive possession and control, and are intended, and will be used only for personal consumption by himself and the members of his family or his bona fide guests. The value of said wines and liquors exceeds Three thousand dollars. The complainant desires and intends to continue to store these wines and liquors in the rooms of which he is lessee as aforesaid; and intends on or before January 26th, 1920, to report to the Commissioner of Internal Revenue the kind and amount of the said liquors in his possession as aforesaid, but with the accompanying declaration that said liquors are held and possessed by him lawfully under said Act for his own use. And the complainant further alleges that the true meaning of the said National Prohibition Act is that such report required thereby is for the purpose of enabling the owner of liquors not possessed in a private dwelling to establish that the same are nevertheless for his personal use, and thereby rebut the prima facie presumption referred to in such Act that such liquors are possessed for the forbidden purpose and use of sale or manufacture contrary to the provisions of said Act; and complainant further alleges, on information and belief, that the defendant on the contrary illegally claims that all liquors though thus possessed by the owner for the use of himself and of his bona fide guests, if not in a private dwelling are unlawfully possessed and will be subjected to seizure and to the other penalties of said Act, thereby ignoring the true meaning of said Act, that the unlawfulness of the possession of liquors is to be made to depend not upon the manner or place of their possession, but upon the said unlawful purpose and use for which they are intended in violation of the provisions of said Act.

Seventh. On information and belief, the defendant, Daniel L. Porter, with the approval of the Commissioner of Internal Revenue, has claimed and publicly stated and threatened that after January

16, 1920, the date when the Eighteenth Amendment to the Constitution of the United States is deemed to take effect, such possession by the complainant and by others in like circumstances of wines and liquors, in the rooms leased by complainant from the defendant, the Lincoln Safe Deposit Company, will be unlawful by reason of the said Amendment and the provisions of the National Prohibition Act, and will expose the complainant and the defendant, Lincoln Safe Deposit Company, to the penalties of that Act. On information and belief, said David L. Porter has induced the defendant, Lincoln Safe Deposit Company, together with many other warehousemen in the County of New York, to order the removal of the aforesaid wines and liquors and other wines and liquors lawfully stored in their warehouses, by means of threats of prosecution for violating the National Prohibition Act and maintaining a common nuisance, which threats the complainant shows and is advised to be contrary to the true intend and meaning of the said Amendment and the National Prohibition Act.

Eighth. The defendant, Lincoln Safe Deposit Company, moved thereto by the threats of the defendant, David L. Porter, has sent out notices to the complainant and, on information and belief, to the other lessees of rooms in said storage warehouse, substantially as follows.

"Lincoln Safe Deposit Co.
New York.

December 4th, 1919.

Your attention is called to Section 3, Title II of the 'National Prohibition Act', commonly known as the 'Volstead Law', which becomes effective January 16, 1920. This law affects deposits of goods made by you in this Warehouse, possession of which goods by us, is prohibited after the above-mentioned date. We also desire to call your attention to Section 6, of Title II of said Act, prohibiting transportation of such goods.

We request you, therefore, to forthwith remove all goods as specified in the 'National Prohibition Act', and which may be used for beverage purposes.

Your attention is also called to Section 119, of the General Business Law of the State of New York, pursuant to which notice is hereby given you to satisfy our lien for charges, and to remove said goods from our Warehouse on or before December 31st, 1919. If these goods have not been removed on or before this date, they will be sold for such lien or disposed of in any lawful manner.

Yours truly,

LINCOLN SAFE DEPOSIT CO.,
WALTER C. REID,
Vice Pres. & Gen'l Mgr."

Ninth. There are no warehousemen's charges due or likely to become due in respect to said three rooms or their contents, such
8 charges having been paid in full up to the 27th day of December, 1919.

Tenth. Said wines and liquors are securely and properly packed and stored in bottles, barrels, casks and cases, and are not of a perishable nature nor liable to injure other property by reason of odor, leakage, inflammability or explosive nature, and are not subject to deterioration in value otherwise than as a result of the threatened unlawful acts of the defendant against which protection is herein sought.

Eleventh. None of the said wines and liquors has been removed by the complainant from the room in which they were stored in said warehouse at the time when said notice was given, and complainant does not intend to remove the same voluntarily except as they may be required from time to time for consumption.

Twelfth: It being impossible lawfully to sell said wines and liquors at or near the place where they are stored, or anywhere in this country, the defendant, Lincoln Safe Deposit Company, as the complainant is informed and believes, threatens and intends to invade the complainant's aforesaid rooms and to remove said wines and liquors from the room or rooms in which they are now held and possessed by the complainant aforesaid without complainant's consent, and to deliver them to the defendant, Daniel L. Porter; and, on information and belief, the said last named defendant intends to seize and hold the said wines and liquors, and to exclude the complainant therefrom and to treat the same as outlawed goods, subject to be dealt
9 with as such under the National Prohibition Act. The said wines and liquors are of great and unique value and are conducive to the health and physical welfare of himself and his family, and cannot be replaced by any expenditure of money. By removal from the room or rooms in which they are stored they are certain to be lost to the complainant and damaged, and are likely in whole or in part to be wasted or destroyed; and complainant will thereby be subjected to irreparable damage.

Thirteenth. On information and belief, the giving of the aforesaid notice and the above-mentioned threats of removal and seizure are wholly due to an erroneous belief and claim on the part of the defendants that after the taking effect of the Eighteenth Amendment to the Constitution of the United States, and the taking effect of the National Prohibition Act designed to enforce the same, the possession by complainant for beverage purposes of intoxicating wines and liquors elsewhere than in his dwelling-house will be unlawful even though such wines and liquors are intended and will be used only for consumption as aforesaid. No other ground exists or is claimed to exist for such removal or seizure; and the said defendants intend to act on their aforesaid belief and claim; and the defendant Porter intends and is moving to enforce the said Eighteenth Amendment and the National Prohibition Act accordingly. The complainant

claims that neither the said Amendment nor the said Act renders such possession by the complainant unlawful; and that any contrary construction of the said Act would render it, at least to that extent, unconstitutional, and violative of the complainant's rights under the Constitution of the United States; and that the defendants
10 and each of them have no lawful warrant for their intended aforesaid course; and that complainant's right thus to possess the said wines and liquors arises both out of the said Act and the Constitution of the United States and the common law.

Fourteenth. For the matters herein alleged, the complainant has no adequate remedy at law. This controversy is one arising under the Constitution and Laws of the United States.

Wherefore, the complainant respectfully prays an injunction, both permanent and temporary, restraining the defendants from interfering in any manner with complainant's possession of and property in said wines and liquors in the rooms leased by him from the Lincoln Safe Deposit Company as aforesaid and from disturbing, moving, removing, selling, destroying or otherwise disposing of said wines and liquors or any of them, whether in said rooms or elsewhere, except by the complainant's authority, together with the costs of this action.

And the complainant further prays for such other and further relief as may be just, including such preliminary restraining order as will protect the complainant's rights; and further prays that a writ of subpœna issue herein directed to the above-named defendants and each of them, commanding them on a day certain to appear and answer this bill of complaint.

WILLIAM G. STREET,
Complainant.
DAVIES, AUERBACH & CORNELL,
Solicitors for Complainant.

Office and Post-Office Address: No. 34 Nassau Street, Borough of Manhattan, New York City.

JOSEPH S. AUERBACH,
CHARLES H. TUTTLE,
Of Counsel for Complainant.

11 STATE OF NEW YORK,
County of New York, ss:

William G. Street, being duly sworn, deposes and says that he is the Complainant in the above-entitled action; that he has read the foregoing Bill of Complaint and knows the contents thereof; that the same is true to his own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters, he believes it to be true.

WILLIAM G. STREET.

Sworn to before me this 7th day of January, 1920.
[NOTARY SEAL.] EDWARD C. CASHIN,
Notary Public, N. Y. County.

New York County.
Notary No. 48, Register No. 10117.

12 [Endorsed:] In the United States District Court, Southern District of New York. William G. Street, Complainant, against Lincoln Safe Deposit Company and Daniel L. Porter, defendants. (Copy.) Order to Show Cause and Complaint. Davies, Auerbach & Cornell, Attorneys for Complainant, Mutual Life Building, 34 Nassau Street, New York City.

13 United States District Court, Southern District of New York.

WILLIAM G. STREET, Complainant,

against

LINCOLN SAFE DEPOSIT COMPANY and DAVID L. PORTER, Defendants.

STATE OF NEW YORK,
County of New York, ss:

Joseph S. Auerbach, being duly sworn, deposes and says: I am attorney and counsellor-at-law and a member of the firm of Davies, Auerbach & Cornell, solicitors for the Complainant in the above-entitled action, and submit the following extracts from reports, ruling and quotations read upon the argument of the motion in this case of January 12, 1920, and, on information and belief, says:

The following notice has been sent out as coming from the International Revenue Department:

"December 8, 1919.

Privately owned intoxicating liquors now held in public storage warehouses may not be sold on and after January 17th, neither may they be removed to owner's residence on and after that date.

ANDREWS,
Acting Deputy Commissioner."

And also the following:

"Q. A lady decides to give up housekeeping and travel abroad. She wishes to store her effects until she settles down again. During this period she will have no fixed abode. Can she law-
14 fully store these goods? If not, how can she dispose of them?

A. If intoxicating liquors are included in her household effects, such liquors cannot be placed in storage. If they are not to be held in a private dwelling for personal use, they must be dis-

posed of for nonbeverage purposes to a person holding permit to use or sell nonbeverage spirits."

"Q. A householder several years ago broke up his home and stored his effects including intoxicating liquors. Can such liquors remain in storage after January 16, 1920? Must the storage room containing the effects be torn up to find the intoxicating liquors?

A. Intoxicating liquors for beverage purposes cannot be left in storage on and after January 17, 1920."

In the discussion of the Bill in the House (Congressional Record, pp. 2941, et seq.), referring to the proposed Amendment to Sect. 3 in regard to the provision that the Act be liberally construed, Mr. Volstead stated:

"Mr. Chairman, I do not think we ought to take up a great deal of time on this. This is not an unusual proposition at all. It is found in many statutes of this class. The purpose of it is to indicate to the court what the object of the legislation is, and to say to the court that it shall receive a construction that will carry out that purpose. We say the object of it is to prohibit intoxicating liquor as a beverage. That may be important in connection with the next section, and I think it ought to remain in there, and remain in substantially the same form in which it is. I can see no harm."

In further discussion, Mr. Volstead admits that the way in which the use of intoxicating liquor as a beverage is to be prevented is by inhibition of its further manufacture and importation and not by legislation that the use of existing intoxicating liquor as a beverage is to be forbidden.

"The manufacture is prohibited. The importation is prohibited. Without manufacture and without importation there can be no intoxicating liquor as a beverage in this country, and it seems to me we might as well express that purpose clearly in the Act itself."

15 This admission was essential; under any other interpretation the Act would not only not be in confirmity with the Constitutional Amendment, but would have been passed without any warrant of Constitutional authority under the Amendment or otherwise.

Deponent further says that according to the uniform publication to-day in the various Metropolitan newspapers additional rules and regulations have been issued by the Internal Revenue Department concerning the use of liquor rightfully possessed, which find no warrant in the Constitutional Amendment or in the Act itself, and amount to an invasion of property rights in the matter of their incidental transportation.

Of such rules and regulations the Court is entitled, under the authorities, to take judicial notice.

Caha v. United States, 152 U. S. 211.

JOSEPH S. AUERBACH.

Sworn to before me this 13th day of January, 1920.

FRANK C. TITUS,
Notary Public.

[NOTARIAL SEAL.]

New York County No. 42.
New York County Register's No. 10051.
Commission expires March 30, 1920.

16 [Endorsed:] United States District Court Southern District of New York. William G. Street, Complainant, against Lincoln Safe Deposit Company and David L. Porter, Defendants. (Copy.) Affidavit. Davies, Auerbach & Cornell, Solicitors for Complainant. Mutual Life Building, 34 Nassau Street, New York City.

17 In the United States District Court, Southern District of New York.

In Equity. Docket No. E 17-21.

WILLIAM G. STREET, Complainant,

against

LINCOLN SAFE DEPOSIT COMPANY and DANIEL L. PORTER, Defendants.

Notice of Motion.

Please take notice that the motion of the defendant Porter to dismiss bill of complaint herein, copy of which motion is herewith served on you, will be brought to hearing at a term of this Court for the hearing of motions to be held at the United States Courts and Post Office Building, Borough of Manhattan, New York City, on the 12th day of January, 1920, at 10.30 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard.

Dated January 9, 1920.

Yours, etc.

FRANCIS G. CAFFEY,
United States Attorney for the Southern District of New York, Solicitor for Defendant Porter.

To Messrs. Davies, Auerbach & Cornell, Solicitors for Complainant, 34 Nassau Street, New York City, New York.

18 In the United States District Court, Southern District of New York.

In Equity. Docket No. —.

WILLIAM G. STREET, Complainant,

against

LINCOLN SAFE DEPOSIT COMPANY and DANIEL L. PORTER, Defendants.

Motion to Dismiss.

Daniel L. Porter, named as a defendant in the above entitled suit, moves that the bill of complaint be dismissed and assigns the following grounds for this motion, namely:

First. The facts alleged in the bill are insufficient to constitute a valid cause of action in equity.

Second. It appears from the bill that the complainant has a plain, adequate and complete remedy at law.

Third. It appears from the bill that the complainant intends after Title II of the National Prohibition Act goes into effect to keep the wines and liquors mentioned in the bill stored outside of his own private dwelling.

Fourth. It appears from the bill that the complainant intends after Title II of the National Prohibition Act goes into effect to transport the wines and liquors mentioned in the bill, or to cause them to be transported, in violation of the provisions of that Act.

Fifth. It does not appear from the bill but that the complainant intends after Title II of the National Prohibition Act goes into effect to transport the wines and liquors mentioned in the bill, or to cause the same to be transported, without obtaining a permit
19 therefor from the Commissioner of Internal Revenue.

Sixth. It is not alleged or shown by the bill that this defendant intends or has threatened to proceed with respect to the wines or liquors mentioned in the bill otherwise than by the institution of proceedings in Court in manner and form as prescribed by Title II of the National Prohibition Act after it goes into effect, or that he intends or has threatened to proceed with respect to such wines or liquors in any way previous to that Title taking effect.

Seventh. This Court is without power or authority to enjoin this defendant on account of all or any of the matters and things mentioned in the bill or to grant as against this defendant all or any of the relief prayed for in the bill.

Wherefore, this defendant says that he should not be held to answer to the bill or to the several allegations thereof, but that said bill should be dismissed, with costs to this defendant.

Dated January 9, 1920.

FRANCIS G. CAFFEY,
United States Attorney for the Southern District of New York, Solicitor for Defendant Daniel L. Porter.

EARL B. BARNES,
Assistant United States Attorney, of Counsel.

20 [Endorsed:] E 17-21. Form No. 336. U. S. District Court, Southern District of New York. William G. Street, Complainant, versus Lincoln Safe Deposit Company and Daniel L. Porter, Defendants. Notice of Motion. Francis G. Caffey, United States Attorney, Solicitor for Defendant Porter. Due service of a copy of the within is hereby admitted. To Davies, Auerbach & Cornell, Solicitors for Complainant, 34 Nassau St.

[Stamped:] Copy this day received. Jan. 9, '20. Ent. S. A. H. Davies, Auerbach & Cornell.

21 United States District Court, Southern District of New York.

In Equity. 17-21.

WILLIAM G. STREET, Complainant,

against

LINCOLN SAFE DEPOSIT COMPANY and DANIEL L. PORTER, Defendants.

Memorandum.

Appreciating as I do the desire of the parties to this litigation to have a decision thereon at the earliest possible time so as to enable them to take, in view of this decision, such steps as they may be advised, I file this memorandum to the effect that the injunction heretofore issued herein will be dissolved and the complainant's bill dismissed.

Within a short time I hope to file a further memorandum setting forth my reasons for the decision thus made.

January 14, 1920.

JOHN C. KNOX,
U. S. District Judge.

22 United States District Court, Southern District of New York.

In Equity. E–17–21.

WILLIAM G. STREET, Complainant,

against

LINCOLN SAFE DEPOSIT COMPANY and DANIEL L. PORTER, Defendants.

Upon Motion for a Preliminary Injunction Pendente Lite and upon the Motion of the Defendant Porter to Dismiss the Bill.

Davies, Auerbach & Cornell (Joseph S. Auerbach and Charles H. Tuttle, of counsel), solicitors for complainant.

Francis G. Caffey, U. S. Attorney (Earl B. Barnes, Ass't U. S. Attorney, of Counsel), solicitor for the defendant Porter.

KNOX, *D. J.:*

The complainant is the lessee of certain rooms within a storage warehouse operated by the defendant, Lincoln Safe Deposit Company, in the Second Internal Revenue Collection District of New York. Among the goods stored by the complainant in the leased rooms is a quantity of lawfully acquired wines and liquors.

The defendant Porter is an agent of the Commissioner of Internal Revenue and is charged with the enforcement of the provisions of the National Prohibition Law, commonly known as the Volstead Act, within the said Collection District.

It is alleged that the wines and liquors owned by the complainant are intended for consumption by himself and the members of his family, or his bona fide guests.

The complaint then proceeds to aver that Porter, with the approval of the Commissioner of Internal Revenue, has claimed, publicly stated and threatened that after January 16, 1920, the date upon which the 18th Amendment to the Federal Constitution goes into effect, the aforesaid possession of said wines and liquors by
23 the complainant, in the said storage warehouse, will be unlawful by reason of the said Amendment and the provisions of the National Prohibition Act, and that the continued possession thereof will subject both the complainant and the Deposit Company to the penalties of the Act.

The complaint further avers that by reason of such threats and fear of prosecution, the Deposit Company has notified complainant to remove the said wines and liquors from its premises, and that, unless complainant does so remove them, the Deposit Company threatens and intends to remove the liquors from the rooms in which they are now stored and possessed, and deliver them to the defendant Porter, who will seize and hold the same as outlawed goods, to be

dealt with as such under the provisions of the National Prohibition Act.

It is alleged that the attitude of the defendants arises from an erroneous belief and construction of law upon their part, and it is claimed that the possession of the wines and liquors situated as aforesaid is now and will be lawful after January 16, 1920, and that if the Amendment and the Enforcement Act be construed to the contrary such construction would render the statute unconstitutional.

There is said to be no adequate remedy at law, and injunctive relief is prayed.

Upon the filing of the bill a temporary restraining order was issued against the Deposit Company, and the matter now comes before me upon an order to show cause why the outstanding restraint should not be continued, and the defendant Porter included within it.

The latter, appearing by the United States Attorney, moves, upon a number of grounds, for a dismissal of complainant's bill. I shall not detail the reasons urged for a dismissal, save to say that the motion made upon behalf of Porter raises a question as to the construction to be placed upon Title II of the Act of Congress of October 28, 1919, with respect to the state of facts shown by the bill. On the pleadings all the facts therein, well pleaded, must be taken as true.

It is the contention of the complainant that the power delegated to the Federal Government by the 18th Amendment to the Constitution is a subtraction from the general police power of the several states, and is limited to so much thereof as is comprehended within the specific subjects to be dealt with by Congress and essential for appropriate legislation thereon.

24 The 18th Amendment reads as follows:

Section 1. After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

Section 2. The Congress and the several States shall have concurrent power to enforce this article by appropriate legislation.

In pursuance of the provisions of Section 2 Congress has enacted Title II of the Volstead Act as embodying its conception of appropriate legislation.

It will thus be seen that nothing is said in the Amendment as to the possession, as such, of intoxicating liquors, nor is there any prohibition against the consumption of intoxicating liquors, and it is urged by reason of this that it is therefore lawful for a person situated as is the complainant to have a supply of liquors intended for personal use in a storage warehouse, upon which supply he may draw as desired. And, incidental to such possession, it is further claimed that the complainant may transport such liquors from their place of storage to his residence, that he may carry liquors on his

person and consume them when and where he pleases. And it is to these propositions that I shall direct attention.

Congress unquestionably sought by the Volstead Act to prohibit the traffic in intoxicating liquors for beverage purposes and, in doing so, possessed, under the police power granted to it by the Amendment, full authority to make the prohibition effective.

The framers of the bill had definitely before them the difficulties of enforcement, as is indicated by the report of the Committee on the Judiciary accompanying H. R. 6810, in which report it was said:

"Congress also takes into consideration the fact that the legislation in question operates upon the most lawless and scheming traffic with which the Government deals. Both the courts and legislative bodies recognize this and their judgments are rightly influenced by it."

25 In this connection the report calls attention to what was said by Mr. Justice McReynolds in delivering the judgment of the Supreme Court in Crane v. Campbell, 245 U. S. 304, to-wit:

"And, considering the notorious difficulties always attendant upon efforts to suppress traffic in liquors, we are unable to say that the challenged inhibition of their possession was arbitrary and unreasonable or without proper relation to the legitimate legislative purpose."

Consequently, in the present instance, Congress has seen fit, by way of carrying into effect its legislative purpose, to limit the places where liquors may be lawfully possessed, and particularly is this true as to liquors that are to be used for beverage purposes.

This last limitation is contained in Section 33 of the Act, which reads:

"After February 1, 1920, the possession of liquors by any person not legally permitted under this title to possess liquor shall be prima facie evidence that such liquor is kept for the purpose of being sold, bartered, exchanged, given away, furnished, or otherwise disposed of in violation of the provisions of this title. Every person legally permitted under this title to have liquor shall report to the commissioner within ten days after the date when the eighteenth amendment of the Constitution of the United States goes into effect, the kind and amount of intoxicating liquors in his possession. But it shall not be unlawful to possess liquors in one's private dwelling while the same is occupied and used by him as his dwelling only and such liquor need not be reported, provided such liquors are for use only for the consumption of the owner thereof and his family residing in such dwelling and of his bona fide guests when entertained by him therein; and the burden of proof shall be upon the possessor in any action concerning the same to prove that such liquor was lawfully acquired, possessed, and used."

It is urged, however, that nowhere in the Act is the personal possession of liquor penalized or declared to be in violation of law, but on the contrary Section 33 of the Act specifically recognizes a

possession by persons not of the class of those in receipt of
26 express legal permits, and as to such possession declares that it shall be only prima facie evidence of an intent to keep the same for commercial purposes. It is said in this connection that upon a rebuttal of the presumption there is a residuum of legal right which prevents a person in the position of complainant from falling within the class who possess liquors in violation of the provisions of Title II.

With this contention I am unable to agree. I say this because Section 3 of the Act provides that the possession of intoxicating liquors for any purpose, except as authorized by the Act, is unlawful. I am also of the opinion that the possession of liquors for beverage purposes by the owner thereof within his dwelling is a possession differing from that referred to in the first sentence of Section 33. This, it seems to me, is indicated by the language employed in the grant of permission to a householder to have liquors for personal consumption in his dwelling. Had Congress intended to legalize the possession of such liquors in any location it would not have been necessary to employ a new sentence (as is the case), wherein words of specific limitation are used. The very exclusiveness of the place of possession necessarily excludes all other places, and in making the restriction so exclusive Congress did not transcend its powers. It appreciated that, were liquors possessed elsewhere than in the private dwelling of the owner transportation would be a necessity incident to the use of the liquers, and to the end that the Act might be effectively enforced it did not mean to authorize the promiscuous transportation of liquors. Such transportation as the Act permits may be carried on only under the most stringent regulations. If possession of liquors anywhere were to be permitted, and if the places where liquor might lawfully be consumed for beverage purposes were likewise without limit, it would be necessary to imply that such liquors might lawfully be transported. This would inevitably follow. It is suggested that there is no reason why the abuse of such incidental transportation might not be prevented by a system of permits. Without attempting to conclude why Congress did not cover the situation in the manner suggested, I may say that, to my mind, a system of permits for the promiscuous transportation of liquor for beverage purposes would be highly impractical.

It may be said—indeed, it is said—that inasmuch as the complainant here lives but a short distance from the warehouse where his liquors are stored, transportation would play such a small part in their removal as to be negligible. Notwithstanding, their removal
would involve some degree of transportation. And if what
27 the complainant desires to do be held lawful, I can see no reason why a resident of a distant city might not have a store of liquors in the same warehouse and be permitted to transport them to his home, even though such transportation involved a movement by car, wagon, train or boat. The answer is, I think, that under this statute transportation, other than as specifically provided for, cannot be a matter of degree. As to liquors for beverage purposes, the definite limits of their transportation are within the confines of

the dwellings of their owner. It is my judgment that any other construction of the Act would result in its emasculation. The sure defense of the purveyor and the bootlegger found with a flask of liquor in his pocket would be that he possessed the same for his personal use.

So, under the 18th Amendment I am satisfied that Congress under the police power delegated thereby had the right to prohibit any transportation of liquors, and in order to reduce the necessity for transportation to a minimum it had the power to legislate as to the places where liquor might lawfully be possessed. It seems to me that in doing so Congress cannot fairly be said to have overstepped the boundaries of appropriate legislation.

The limitation of the places where liquors may lawfully be possessed is but a corollary to the prohibition against their transportation, and, under the authority of Crane v. Campbell (supra), I do not think the inhibition as to the places of possession are "arbitrary and unreasonable or without proper relation to the legitimate legislative purpose."

Upon the subject as to whether the carriage of liquor upon the person comes within the Act, it is argued that the facts present in United States v. Hill, 248 U. S., 420, are not applicable owing to the fact that the prosecution in the Hill case was based upon the Reed Amendment, and that the Court merely held that "the transportation of liquor upon the person of one being carried in interstate commerce is within the well established meaning of the words 'interstate commerce' ". That is quite true, but it must be remembered that the only jurisdiction of Congress to enact the prohibitory law then under discussion was based upon the interstate commerce clause of the Constitution, and an interstate transportation was essential to conviction. Now, however, the power of Congress has been amplified by the adoption of the 18th Amendment, and Congress can deal not only with interstate but also with intrastate transportation of liquor.

In view of the foregoing, and without regard to the tech-
28 nical objection urged against the complaint, I cannot do otherwise than to dismiss complainant's bill.

This opinion expresses my views of the situation as it existed upon the date when I filed my former memorandum herein in which I said that I would dismiss complainant's bill and would file my reasons therefor at a later date.

February 10, 1920.

JNO. C. KNOX,
U. S. District Judge.

29 At a Stated Term of the District Court of the United States of America for the Southern District of New York, held in the United States Courts and Post Office Building, in the City of New York, in said District, on the 19th day of February, 1920.

Present: Honorable John C. Knox, U. S. District Judge.

In Equity.

Docket No. E 17/21.

WILLIAM G. STREET, Complainant,

vs.

LINCOLN SAFE DEPOSIT COMPANY and DANIEL L. PORTER, Defendants.

Decree.

This cause came on to be heard at this term on motion by the complainant for an injunction pendente lite and on motion by the defendant Daniel L. Porter to dismiss the bill of complaint and was argued by counsel and thereupon upon consideration thereof, it was

Ordered, adjudged and decreed as follows:

That the motion of the complainant for an injunction pendente lite be and the same hereby is denied; and it was further

Ordered, adjudged and decreed:

That the motion of the defendant Daniel L. Porter to dismiss the bill of complaint be and the same hereby is granted; and it was further

Ordered, adjudged and decreed:

That the bill of complaint herein be and the same hereby is dismissed with costs to the defendant Daniel L. Porter to be taxed.

JNO. C. KNOX,
U. S. D. J.

30 SIR: You will please take notice that a Decree of which the within is a copy, was this day duly entered in the within-entitled action, in the office of the Clerk of the U. S. District Court S. D. N. Y. Dated, N. Y., February 19, 1920. Yours, etc., Francis G. Caffey, U. S. Attorney, Attorney for Defendant, Daniel L. Porter.

[Endorsed:] E 17-21. Form No. 336. U. S. District Court, Southern District of New York. William G. Street, Complainant, versus Lincoln Safe Deposit Company and Daniel L. Porter, Defendants. Decree with notice of entry. Francis G. Caffey, United States Attorney, Solicitor for Def't Porter. To Davies, Auerbach & Cornell, Attorneys for Complainant, 34 Nassau St.

[Stamped:] Ent. L. W. B. Received Feb. 24, '20. Davies, Auerbach & Cornell.

31 District Court of the United States, Southern District of New York.

In Equity. 17-21.

WILLIAM G. STREET, Plaintiff,

vs.

LINCOLN SAFE DEPOSIT COMPANY and DANIEL L. PORTER, Defendants.

The plaintiff in the above entitled cause, filed a bill of complaint which is hereunto annexed, on the 8th day of January, one thousand nine hundred and twenty, and the writ of subpœna was thereupon issued, and returned served.

On January 8, 1920, an order was made for the defendants to show cause why a preliminary injunction should not be granted. On the 9th day of January, thereafter, the defendant Daniel L. Porter filed a motion to dismiss said bill of complaint, the same being hereto annexed.

Afterwards, and at the January term, 1920, of said Court, present the Honorable John C. Knox, Judge, the said motions came on to be heard and were argued by Counsel. On the 19th day of February, one thousand nine hundred and twenty, a decree of said Court was filed and entered in favor of the defendant, dismissing the bill of complaint and denying the motion for preliminary injunction.

And the costs having been taxed by the clerk at the sum of Twenty-seven and 65/100 dollars, the process, pleadings, and decrees together with other papers filed in said cause, are duly annexed hereunto.

32 Wherefore let the said Daniel L. Porter recover of said William G. Street, the sum of Twenty-seven and 65/100 ($27.65) dollars, as adjudged in said final decree, the costs and charges as taxed.

Signed and enrolled this 20th day of February A. D. 1920.

ALEX. GILCHRIST, JR.,
Clerk.

33 SIR:

You will please take notice that a Final Record of which the within is a copy, was this day duly entered in the within-entitled action, in the office of the Clerk of the U. S. District Court S. D. N. Y.

Dated, N. Y., February 20, 1920.

Yours, etc.,

FRANCIS G. CAFFEY,
U. S. Attorney, Attorney for Defendant, Daniel L. Porter.

[Endorsed:] In Equity 17-21. Form No. 336. U. S. District Court, Southern District of New York. William G. Street, Plaintiff, versus Lincoln Safe Deposit Company and Daniel L. Porter, Defendants. Final Record with Notice of Entry. Francis G. Caffey, United States Attorney, Attorney for Porter. Davies, Auerbach & Cornell, Attorney- for Plaintiff, 34 Nassau St.

[Stamped:] Ent. L. W. B. Received Feb. 24. '20. Davies, Auerbach & Cornell.

34 United States District Court, Southern District of New York.

WILLIAM G. STREET, Complainant,

against

LINCOLN SAFE DEPOSIT COMPANY and DANIEL L. PORTER, Defendants.

Now comes the complainant, William G. Street, and files the following assignment of errors upon which he will rely on his appeal from the judgment or decree in equity entered herein on the 19th day of February, 1920, and the final record of February 20, 1920:

1. That the court erred in dismissing the bill of complaint herein.

2. That the court erred in denying the plaintiff's motion for an injunction pendente lite.

3. That the court erred in holding that the Act of Congress of October 28, 1919, known as the "National Prohibition Act," to be constitutional and valid.

4. That the court erred in holding that Title II of the Act of Congress of October 28, 1919, known as the "National Prohibition Act" prohibits the storage of liquors intended for personal use in a storage warehouse.

5. That the court erred in holding that Title II of the Act of Congress of October 28, 1919, known as the "National Prohibition Act," prohibits the transportation of liquors intended for personal use from their place of storage in a storage warehouse to the
35 residence of their owner.

6. That the Court erred in holding that Title II of the act of Congress of October 28, 1919, known as the "National Prohibition Act," prohibits the carrying of liquors on the person of the owner thereof and the consumption of them by him outside of his residence.

7. That the court erred in holding the so-called Eighteenth Amendment to the Constitution of the United States to be valid and enforcible.

8. That the court erred in holding that the so-called Eighteenth Amendment to the Constitution of the United States had been

validly and constitutionally proposed to the Legislatures of the several States by the Congress of the United States, as required by Article V of the Constitution of the United States.

9. That the court erred in holding that the so-called Eighteenth Amendment to the Constitution of the United States had been duly ratified by three-fourths of the several States, as required by Article V of the Constitution of the United States.

Wherefore, complainant-appellant prays that said decree of the United States District Court for the Southern District of New York be reversed and a preliminary injunction be granted the plaintiff as prayed for in his said bill of complaint herein, and for such other and further relief as to the court may seem just and proper.

Dated, New York, March 13th, 1920.

DAVIES, AUERBACH & CORNELL,
Solicitors for Complainant-Appellant.

O. & P. O. Address: 34 Nassau Street, Borough of Manhattan, New York City.

36 To:

Solicitor for Defendant, Lincoln Safe Deposit Company.

Francis G. Caffey, Esq., United States Attorney, Solicitor for Defendant, Daniel L. Porter.

Alexander Gilchrist, Jr., Esq., Clerk of the United States District Court.

37 [Endorsed:] United States District Court, Southern District of New York. William G. Street, Complainant, against Lincoln Safe Deposit Company and Daniel L. Porter, Defendants. (Copy.) Assignments of Errors. Davies, Auerbach & Cornell, Attorneys for Complainant-App., Mutual Life Building, 34 Nassau Street, New York City.

38 United States District Court, Southern District of New York.

WILLIAM G. STREET, Complainant,

against

LINCOLN SAFE DEPOSIT COMPANY and DANIEL L. PORTER, Defendants.

The complainant above named, William G. Street, conceiving himself aggrieved by the judgment or decree made and entered in the above-entitled cause on the 19th day of February, 1920, and the final record of February 20, 1920, does hereby appeal from such judgment or decree and final record to the Supreme Court of the United States, for the reasons specified in the assignment of erro-s, which is filed herewith.

And the said William G. Street prays that he be allowed this appeal and that a transcript of the record, papers and procedings upon

which said judgment or decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

Dated, New York, March 13th, 1920.

DAVIES, AUERBACH & CORNELL,
Solicitors for Complainant.

O. & P. O. Address: 34 Nassau Street, Borough of Manhattan, New York City.

Appeal allowed March 13th, 1920.

LEARNED HAND,
District Judge.

39 [Endorsed:] United States District Court, Southern District of New York. William G. Street, Complainant, against Lincoln Safe Deposit Company and Daniel L. Porter, Defendants. (Copy.) Appeal and Allowance. Davies, Auerbach & Cornell, Sol'rs for Complainant, Mutual Life Building, 34 Nassau Street, New York City.

40 By Hon. Learned Hand, one of the Judges of the District Court of the United States for the Southern District of New York in the Second Circuit, to Lincoln Safe Deposit Company and Daniel L. Porter, Greeting:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States to be holden at Washington on the 29th day of March, 1920, pursuant to an appeal filed in the Clerk's Office of the District Court of the United States for the Southern District of New York, wherein William G. Street is Plaintiff-Appellant and you are Defendants-Appellees; and you are required to show cause, if any there be, why the judgment or decree in said appeal mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Given under my hand at the Borough of Manhattan, City of New York, in the District and Circuit above named, on this 13th day of March, in the year of our Lord One thousand nine hundred and twenty and of the Independence of the United States the One Hundred and Forty-fourth.

LEARNED HAND,
Judge of the District Court of the United States for the Southern District of New York for the Second Circuit.

41 [Endorsed:] United States District Court, Southern District of New York. William G. Street, Complainant, against Lincoln Safe Deposit Company and Daniel L. Ropes, Defendants. (Copy.) Citation on Appeal. Davies, Auerbach & Cornell, Sol'rs for Complainant, Mutual Life Building, 34 Nassau Street, New York City.

42 United States District Court, Southern District of New York.

WILLIAM G. STREET, Complainant,

against

LINCOLN SAFE DEPOSIT COMPANY and DANIEL L. PORTER, Defendants.

It is hereby stipulated, pursuant to Rule VIII of the Supreme Court of the United States, that the following papers shall constitute the transcript of record on appeal herein to the Supreme Court of the United States from the judgment or decree made and entered in the above-entitled cause on the 19th day of February, 1920, and the final record of February 20, 1920:

1. Subpœna.
2. Bill of complaint.
3. Affidavit of Joseph S. Auerbach, verified January 13, 1920.
4. Notice of Motion of defendant Porter to dismiss bill of complaint herein, dated January 9, 1920.
5. Judgment or decree entered February 19, 1920.
6. Final record of February 20, 1920.
7. Opinion of Hon. John C. Knox.
8. Petition on appeal and allowance.
9. Assignment of errors.
10. Citation.
11. Stipulation as to accuracy of record.
12. Certificate of Clerk as to accuracy of record.
13. Order to show cause, dated January 8, 1920.

43 Dated, New York, March, 1920.

____ ____,
Solicitors for Plaintiff.

____ ____,
Solicitor for Defendant, Lincoln Safe Deposit Company.

____ ____,
United States Attorney, Solicitor for Defendant, Daniel L. Porter.

44 [Endorsed:] United States District Court, Southern District of New York. William G. Street, complainant, against Lincoln Safe Deposit Company and Daniel L. Porter, defendants. (Copy.) Stipulation as to Record. Davies, Auerbach & Cornell, At-

torneys for Pl'ff-Appellant, Mutual Life Building, 34 Nassau Street, New York City.

45 United States District Court, Southern District of New York.

WILLIAM G. STREET, Complainant,
against
LINCOLN SAFE DEPOSIT COMPANY and DANIEL L. PORTER,
Defendants.

It is hereby stipulated and agreed that the foregoing is a true transcript of the record of said District Court in the above-entitled matter as agreed upon by the parties.

Dated, New York, March 13, 1920.

DAVIES, AUERBACH & CORNELL,
Solicitors for Complainant.

FRANCIS G. CAFFEY,
United States Attorney, Solicitor for Defendant, Daniel L. Porter.

46 United States District Court, Southern District of New York.

WILLIAM G. STREET, Complainant,
against
LINCOLN SAFE DEPOSIT COMPANY and DANIEL L. PORTER,
Defendants.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, Alexander Gilchrist, Jr., Clerk of the District Court of the United States for the Southern District of New York, do hereby certify that the foregoing is a correct transcript of the record of the said District Court in the above-entitled matter as agreed on by the parties.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed at the City of New York in the Southern District of New York this 13th day of March, in the year of our Lord, One thousand nine hundred and twenty, and of the Independence of the United States the One Hundred and Forty-fourth.

[Seal District Court of the United States, Southern District of N. Y.]

ALEX. GILCHRIST, JR.,
Clerk.

Endorsed on cover: File No. 27,550. S. New York D. C. U. S. Term No. 795. William G. Street, appellant, vs. Lincoln Safe Deposit Company and Daniel L. Porter. Filed March 15th, 1920. File No. 27,550.

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Supreme Court of the United States.

OCTOBER TERM, 1919, No. [redacted] 278

WILLIAM G. STREET,

Plaintiff-appellant,

vs.

LINCOLN SAFE DEPOSIT COMPANY and DANIEL L. PORTER,

Defendants-appellees.

MOTION TO ADVANCE BY PLAINTIFF-APPELLANT.

JOSEPH S. AUERBACH,
CHARLES H. TUTTLE,
Of counsel for plaintiff-appellant.

Supreme Court of the United States

OCTOBER TERM, 1919.

No. .

WILLIAM G. STREET,
Plaintiff-Appellant,

against

LINCOLN SAFE DEPOSIT COMPANY
and DANIEL L. PORTER,
Defendants-Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK.

Motion to Advance by Plaintiff-Appellant.

Now comes William G. Street, the plaintiff-appellant herein, and respectfully moves that the above-entitled cause be advanced for early hearing during the present Term, and preferably for hearing on the 29th day of March, 1920.

The above-entitled appeal is from a decree of the District Court of the United States for the Southern District of New York dismissing the bill of complaint of the plaintiff and denying his motion for a preliminary injunction. The bill of complaint was filed to procure an injunction

against the above-named defendants to restrain them from interfering with plaintiff's possession of and property in certain wines and liquors in rooms leased by him from the Lincoln Safe Deposit Company and from disturbing, moving, removing, selling, destroying or otherwise disposing of said wines and liquors. The cause involves the validity and construction of the so-called Eighteenth Article of Amendment to the Constitution of the United States and the constitutionality, enforcibility and construction of Title II of the National Prohibition Act.

The validity of said alleged constitutional amendment is challenged upon the ground that as construed by the Court below it tends, directly and in principle, to impair and destroy reserved powers of the several States and their rights to local self-government and is not authorized by Article V of the Constitution of the United States; that the construction placed upon said alleged Consitutional Amendment by the Court below extends its scope beyond the express terms thereof so as to impair and destroy powers reserved in the States and never intended by the people of the States to be delegated to the Federal Government by such alleged Constitutional Amendment.

The interpretation of the alleged Eighteenth Amendment is involved herein in order to determine whether it authorizes the Congress of the United States to prohibit the possession by complainant for beverage purposes of intoxicating wines and liquors elsewhere than in his private dwelling for the purpose of consumption by him of such wines and liquors in his private dwelling and whether such alleged Amendment authorizes the destruction without compensation of such

liquors lawfully acquired by complainant before the passage of the Amendment and so held with such purpose by him.

The constitutionality of Title II of the Prohibition Act is challenged (1) because as construed by the Court below it exceeds the power of Congress delegated to such body under the alleged Constitutional Amendment, and (2) because it deprives the plaintiff of lawfully acquired pre-existing property without compensation and without due process of law in violation of the terms of the Fifth Article of Amendment to the Constitution of the United States.

Complainant lawfully owned certain wines and liquors and at the time of the passage of the Act had them in a room leased of the defendant-appellee, the Lincoln Safe Deposit Company. The charges for such storage have been paid. The wines and liquors have been so kept by plaintiff for the purpose of consumption by himself within his private dwelling. The case involves not only the plaintiff but a great number of citizens all over the United States similarly situated. In order that the plaintiff may not be unjustly exposed to irreparable damage in the destruction of a property which he cannot now again acquire and in order that the general question involving the validity, constitutionality and construction of the so-called Constitutional Amendment and Title II of the National Prohibition Act may be determined, it is necessary that this Court should hear the cause at an early date. It is in the public interest that final authority upon these questions should be speedily and definitely rendered.

A number of the questions involved herein do

not arise and have not come before this Court in the cases before argued and in the cases now advanced for argument.

Wherefore, the plaintiff-appellant respectfully prays that this Honorable Court advance the above-entitled cause for an early hearing during the present Term and preferably for hearing on Monday, the 29th of March, 1920.

All of which is respectfully submitted for the consideration and action of the Court.

Notice of this application has been served upon the Department of Justice.

Dated, March 13, 1920.

DAVIES, AUERBACH & CORNELL,
Attorneys for Plaintiff-Appellant,
Office and P. O. Address,
34 Nassau Street,
Borough of Manhattan,
New York City.

JOSEPH S. AUERBACH,
CHARLES H. TUTTLE,
Of Counsel for Plaintiff-Appellant.